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Attorneys for Plaintiff

Samick Musical Instruments Co., Ltd.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

2:15-cv-00333-MMD-GWF

SAMICK MUSICAL INSTRUMENTS CO.,  
LTD., a Korean limited company,

Plaintiff,

vs.

QRS MUSIC TECHNOLOGIES, INC., a  
Delaware corporation; THOMAS DOLAN, an  
Individual,

Defendants.

And Related Counterclaims.

Case No. ~~3:14 cv 00618-MMD-VPC~~

~~[PROPOSED]~~ STIPULATED  
PROTECTIVE ORDER

1 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, and with the consent of  
2 the parties to this action, IT IS HEREBY ORDERED:

3 1. All documents, materials, items, and/or information which are designated as  
4 confidential under the terms of this Protective Order, and contain or comprise confidential and/or  
5 sensitive research, development or commercial information produced either by a party or by a  
6 non-party shall be governed by this Protective Order.

7 2. Any information produced by any party or non-party as part of discovery in this  
8 action may be designated by any party or the producing non-party as (1) "Confidential" or (2)  
9 "Confidential-Attorneys' Eyes Only." As a general guideline, materials designated  
10 "Confidential" shall be those confidential and/or sensitive things that may be disclosed to the  
11 parties for the purpose of the litigation, but which must be protected against disclosure to third  
12 parties. As a general guideline, materials designated "Confidential-Attorney's Eyes Only" shall  
13 be those confidential and/or sensitive things of a financial, commercial, proprietary or technical  
14 nature which might be of value to others, and which must be protected from disclosure to such  
15 party and/or third parties. Absent a specific order by this Court, or written permission from the  
16 designating party, information once designated as "Confidential" or "Confidential-Attorney's  
17 Eyes Only" shall be used by parties solely in connection with this litigation, and not for any other  
18 purpose, including, but not limited to, business, competitive, or governmental purpose or  
19 function, and such information shall not be disclosed to anyone except as provided herein.

20 3. Any party or non-party wishing to come within the provisions of this Protective  
21 Order shall designate, in writing, the documents, information, or portions thereof which he, she  
22 or it considers confidential at the time such documents are produced or such information is  
23 disclosed, or as soon thereafter as the person or entity seeking protection becomes aware of the  
24 nature of the information or materials disclosed and sought to be protected hereunder. In the  
25 instance of documents, the items produced must be marked "Confidential" or "Confidential-  
26 Attorneys' Eyes Only" by the producing party or non-party. In the instance of depositions,  
27 counsel may, in the record of the deposition, designate the transcript or portion thereof as  
28 "Confidential" or "Confidential-Attorneys' Eyes Only," and only the parties identified in

1 paragraphs 4 and 5 may then be present in the depositions. The witness under deposition or his  
2 counsel may invoke the provisions of this Protective Order in a timely manner, giving adequate  
3 warning to counsel for the party or non-party that testimony about to be given is deemed  
4 "Confidential" or "Confidential-Attorneys' Eyes Only." The designations should be made on the  
5 record whenever possible, but a party may designate portions of a deposition either  
6 "Confidential" or "Confidential-Attorney's Eyes Only" provided written notice of such  
7 designation is given to each party no later than (10) ten days following receipt of the deposition  
8 transcript.

9 4. Documents, deposition testimony, or answers to interrogatories stamped  
10 "Confidential," or copies or extracts therefrom, and compilations and summaries thereof, and the  
11 information therein, may be given, shown, made available to, or communicated in any way only  
12 to the Court (including, but not limited to, the presiding judge, clerks, and court staff) and those  
13 parties or other persons who agree in advance to abide by this Protective Order and to whom it is  
14 necessary that the material be shown for purposes of this litigation.

15 5. Documents, deposition testimony, or answers to interrogatories stamped  
16 "Confidential-Attorneys' Eyes Only" or copies or extracts therefrom, and summaries and  
17 compilations thereof, and the information therein, may be given, shown, made available to, or  
18 communicated in any way only to (a) the Court (including, but not limited to, the presiding  
19 judge, clerks, and court staff) as provided in Paragraphs 9 and 13; (b) the trial counsel designated  
20 on the pleadings for the law firms of record in this actions and those of their staff to whom it is  
21 necessary that the materials be shown for the purposes of this litigation; (c) consultants as  
22 defined in Paragraph 6 hereof and pursuant to the provisions on Paragraph 7 hereof.

23 6. For purposes of Paragraph 5(b) hereof, a consultant shall be defined as a person  
24 who is not an employee of a party nor anticipated to become an employee of a party in the near  
25 future, and who is retained or employed as a bona fide consultant or expert for purposes of this  
26 litigation, whether full or part-time, by or at the direction of counsel for a party.

27 7. The procedure for having a consultant approved for access to information  
28 designated "Confidential-Attorneys' Eyes Only" shall be as follows:

1 (a) The party seeking to have a consultant, as defined in Paragraph 6 hereof,  
2 approved shall provide the producing party with:

- 3 i) the name of the designated person;
- 4 ii) the present employer and title of said designated person;
- 5 iii) a resume or curriculum vitae of said designated person;
- 6 iv) a written acknowledgment, in the form of Attachment A hereto, signed by  
7 the designated person for whom approval is sought, that the person has  
8 read this Protective Order and agrees to be bound by its terms.

9 (b) Within five (5) calendar days after mailing (via overnight delivery) of the  
10 information and written acknowledgment described in subparagraph (a), the producing party may  
11 object to the person proposed for approval if the producing party has genuine reason to believe  
12 that there is a reasonable possibility that the designated person may use information designated  
13 "Confidential-Attorneys' Eyes Only" for purposes other than the preparation or trial of this case  
14 or that the person proposed is in a competitive position or works for a competitor of the  
15 producing party such that they cannot avoid possible use of the protected information.  
16 Objections must be based upon a legitimate good faith belief and shall not be made for purposes  
17 of delaying approval of said designated person. If an objection is found not to be made in good  
18 faith by the court, then the party whom the objection was made shall be entitled to reasonable  
19 attorneys' fees and costs. Failure to object within ten (10) calendar days to a person proposed  
20 shall be deemed approval, but shall but not preclude a producing party from objecting to  
21 continued access by that person where facts suggesting a basis for objection are subsequently  
22 learned by the producing party or its counsel.

23 (c) If the producing party so objects, the producing and requesting party shall, within  
24 five (5) calendar days from the date of the mailing of notice of objection, confer and attempt to  
25 resolve the dispute. At the conference, the producing party shall inform the requesting party of  
26 its reasons for objecting to the designated person. If the parties cannot resolve the dispute, or if  
27 the conference does not take place, then the producing party may move the Court for an order  
28 that access to information designated "Confidential-Attorneys' Eyes Only" be denied to the

1 designated person. The time periods are not to restrict either party from moving for a court order  
2 earlier if the circumstances so require.

3 (d) The parties agree that the information identified above in subparagraph 7(a) in  
4 most cases constitutes sufficient information from which to approve said designated person, but a  
5 party may seek production of additional information if reasonably necessary to determine  
6 whether to approve the designated person.

7 8. All confidential information covered by this order shall be kept in secure facilities  
8 at trial counsel's offices and in no event be taken to or stored on the premises of a party without  
9 having first received written permission from the party designating the document confidential,  
10 and access to those facilities shall be permitted only to those designated persons set forth in  
11 Paragraphs 4, 5, and 6 of this Protective Order as persons properly having access thereto under  
12 the appropriately designated degree of confidentiality. All counsel for the parties who have  
13 access to confidential information under this Protective Order acknowledge they are bound by  
14 this Order and submit to the jurisdiction of this Court for purposes of enforcing this Order.

15 9. No party or non-party may file any document containing any information or  
16 exhibits designated by another party or non-party as "Confidential" or "Confidential - Attorneys'  
17 Eyes Only" within the scope of this Order unless it is filed under seal. No party or non-party  
18 may file any document containing any information or exhibits designated by the filing party as  
19 "Confidential" or "Confidential -- Attorneys' Eyes Only" within the scope of this Order unless  
20 the party concurrently or in advance of the filing seeks leave of Court. Notwithstanding any  
21 agreement among the parties, the party seeking to file a paper under seal bears the burden of  
22 overcoming the presumption in favor of public access to papers filed in court.

23 10. If any document or information designated to be "Confidential" or "Confidential-  
24 Attorneys' Eyes Only" pursuant to this Protective Order is used during the course of a deposition  
25 herein, that portion of the deposition record reflecting such confidential information shall be  
26 sealed and stamped with the designated degree of confidentiality, and access thereto shall be  
27 limited pursuant to the other terms of this Protective Order.

1           11.     A party should designate as “Confidential” or “Confidential-Attorneys’ Eyes  
2 Only” only such information or documents as the party reasonably and in good faith believes  
3 require and justify protection under this Protective Order. If, at any time during the pendency or  
4 trial of this action, counsel for any party claims that counsel for any other party is unreasonably  
5 claiming certain information produced herein to be confidential, objecting counsel may make an  
6 appropriate application to this Court, with confidential portions thereof to be kept under seal,  
7 requesting that specifically identified documents, information, and/or deposition testimony be  
8 excluded from the provisions of this Protective Order or downgraded in terms of the degree of  
9 protection provided. Before filing any such application, the party seeking relief shall confer with  
10 the other party to determine whether the matter can be resolved by agreement. The prevailing  
11 party in such a dispute shall be entitled to reasonable attorneys’ fees and costs.

12           12.     The pretrial order submitted by the parties in this action shall address the  
13 treatment at trial of documents, information or testimony designated "Confidential" or  
14 "Confidential-Attorneys' Eyes Only" pursuant to this Protective Order unless the confidentiality  
15 of such information has been removed by agreement of counsel or by this Court in accordance  
16 with the provisions of Paragraph 11 of this Protective Order.

17           13.     At any hearing relating to this litigation prior to trial before any judicial officer,  
18 subject to the rules of evidence and order of the Court, a party may use any “Confidential” or  
19 “Confidential-Attorneys’ Eyes Only” information or documents for any purpose, provided that  
20 adequate prior notice of such use is given to counsel for the opposing party to permit the  
21 opposing party the opportunity to obtain appropriate protection from the Court, including a  
22 request to the Court that the courtroom be cleared and that the court employees be advised as to  
23 the terms of this Protective Order. If any party reasonably anticipates that “Confidential” or  
24 “Confidential-Attorneys’ Eyes Only” information or documents will be presented in any hearing  
25 in this litigation, it may request that the Court close the courtroom during such presentation. If  
26 the Court denies any such request, the use of the “Confidential” or “Confidential-Attorneys’  
27 Eyes Only” information or documents in court shall not affect its coverage by this Protective  
28 Order or constitute a waiver of confidentiality with respect thereto.

1           14.     The terms of this Protective Order shall apply to all manner and means of  
2     discovery, including entry onto land or premises and inspection of books, records, documents,  
3     and tangible things.

4           15.     Unless otherwise permitted by statute, rule or prior court order, papers filed with  
5     the court under seal shall be accompanied by a contemporaneous motion for leave to file those  
6     documents under seal, and shall be filed consistent with the court's electronic filing procedures  
7     in accordance with Local Rule 10-5(b). Notwithstanding any agreement among the parties, the  
8     party seeking to file a paper under seal bears the burden of overcoming the presumption in favor  
9     of public access to papers filed in court. *Kamakana v. City and County of Honolulu*, 447 F.2d  
10    1172 (9th Cir. 2006).

11          16.     The terms of this Protective Order do not preclude, limit, restrict, or otherwise  
12    apply to the use of documents at trial, except as set forth in Paragraph 12.

13          17.     Nothing herein shall be deemed to waive any applicable privilege or work product  
14    protection, or to affect the ability of a party to seek relief for an inadvertent disclosure of material  
15    protected by privilege or work product protection.

16          18.     Any witness or other person, firm or entity from which discovery is sought may  
17    be informed of and may obtain the protection of this Protective Order by written advice to the  
18    parties' respective counsel or by oral advice at the time of any deposition or similar proceeding.

19          19.     This Protective Order shall be effective on the date entered by the Court.

20          20.     All provisions of this Protective Order restricting the communication or use of  
21    Confidential Information shall continue to be binding after the conclusion of this action, unless  
22    otherwise agreed or ordered. Upon conclusion of the litigation, a party in the possession of  
23    Confidential Information, other than that which is contained in pleadings, correspondence, and  
24    deposition transcripts, shall either (a) return such documents no later than thirty (30) days after  
25    conclusion of this action to counsel for the party or nonparty who provided such information, or  
26    (b) destroy such documents within the time period upon consent of the party who provided the  
27    information and certify in writing within thirty (30) days that the documents have been

28    ///

1 destroyed.

2 21. The parties agree that any inadvertent disclosure or production of documents  
3 protected by the attorney-client privilege or work-product doctrine, or any other applicable  
4 privilege or protection, will not constitute a waiver of any such available privilege or protection  
5 by the disclosing party. In the event that the receiving party discovers that it has received either  
6 attorney-client privilege or work-product protected documents, it will bring that fact to the  
7 attention of the producing party immediately upon discovery. Upon the request of the producing  
8 party, the receiving party will promptly return to the producing party any attorney-client or  
9 work-product protected document and any copies that the receiving party may have made. Upon  
10 the request of the producing party, the receiving party will promptly disclose the names of any  
11 individuals who have read or have had access to the attorney-client privilege or work-product  
12 protected document. No such inadvertently produced attorney-client privilege or work-product  
13 protected document may be used in evidence against the producing party.

14 **IT IS SO STIPULATED:**

15 DATED this 24<sup>th</sup> day of February, 2015

DATED this 24<sup>th</sup> day of February, 2015

16 WATSON ROUNDS

CLYDE SNOW & SESSIONS, P.C.

18 By: /s/ Matthew D. Francis

By: /s/ Jacob L. Fonnesebeck

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Attorneys for Samick

Attorneys for QRS

25 **IT IS SO ORDERED:**

26   
27 UNITED STATES MAGISTRATE JUDGE

28 DATED: February 26, 2015



Attachment A

NONDISCLOSURE AGREEMENT

I, \_\_\_\_\_, do solemnly swear that I am fully familiar with the terms of the Stipulated Protective Order entered in *Samick Musical Instruments Co., Ltd. v. QRS Music Technologies, Inc.*, United States District Court for the District of Nevada, Case No.: 3:14-cv-00618-MMD-VPC and hereby agree to comply with and be bound by the terms and conditions of said Order unless and until modified by further Order of this Court. I hereby consent to the jurisdiction of said Court for purposes of enforcing this order.

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

Pursuant to **FRCP 5(b)**, I certify that I am an employee of WATSON ROUNDS, P.C., and on this 24th day of February, 2015, I served the document entitled [PROPOSED] STIPULATED PROTECTIVE ORDER on the parties listed below via the following:

**GORDON SILVER**

Eric D. Hone

Gabriel A. Blumberg

3960 Howard Hughes Parkway

Las Vegas, Nevada 89169

[ehone@gordonsilver.com](mailto:ehone@gordonsilver.com)

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☐ **VIA FIRST CLASS U.S. MAIL:** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Reno, Nevada for delivery to the foregoing.

☐ **VIA FACSIMILE:** by transmitting to a facsimile machine maintained by the person on whom it is served at the facsimile machine telephone number as last given by that person on any document which he/she has filed in the cause and served on the party making the service. The copy of the document served by the facsimile transmission bears a notation of the date and place of transmission and the facsimile telephone number to which it was transmitted.

☐ **BY PERSONAL SERVICE:** by personally hand-delivering or causing to be hand delivered by such designated individual whose particular duties include delivery of such on behalf of the firm, addressed to the individual(s) listed, signed by such individual or his/her representative accepting on his/her behalf.

☐ **VIA COURIER:** by delivering a copy of the document to a courier service for over-night delivery to the foregoing parties.

☒ **VIA ELECTRONIC SERVICE:** by electronically filing the document with the Clerk of the Court using the ECF system which served the foregoing parties electronically.

/s/ Nancy Lindsley

Employee of Watson Rounds, P.C.